

Message Text

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TO SECSTATE WASHDC 4068

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3.O. 11652: N/A

TAGS: CGEN (DANENZA, VICTOR)

SUBJECT: SERVICE OF SUBPOENA

REF STATE 131723

1. SERVICE OF SUBPOENA WAS EFFECTED UNDER ART. 169 OF THE ITALIAN CODE OF CRIMINAL PROCEDURE WHICH EXPLICITELY SAYS THAT, IF THE DESTINEE IS NOT AVAILABLE, THE SUBPOENA CAN BE LEFT WITH CERTAIN OTHER PEOPLE INCLUDING THE CONCIERGE. ART. 139 AND 805 OF THE ITALIAN CODE OF CIVIL PROCEDURE ARE USED FOR SERVICING CIVIL ACTS AND THERE IS NO RELEVANT DIFFERENCE BETWEEN THE TWO SETS OF ARTICLES AS FAR AS THE MATERIAL HANDLING OF SERVICE IS CONCERNED.

2. ART. 169 OF THE ITALIAN CRIMINAL PROCEDURE CODE STATES THE PROCEDURE TO BE FOLLOWED IN SERVICING ACTS ALSO FROM FOREIGN AUTHORITIES. IT IS THEREFORE UNDERSTOOD THAT ANY PROCEDURE DIFFERENT FROM THE ONE DESCRIBED CANNOT BE FOLLOWED.

3. DR. MANNINI, OF THE PROCURA DELLA REPUBBLICA IN MILAN, SAID HE WOULDN'T CONTEST SERVICING AT THE CONSULATE. THIS, HOWEVER, WOULD NOT HAVE BEEN LEGAL ACCORDING TO ITALIAN LAW AND DANENZA COULD HAVE HAD A GOOD POINT IN INVALIDATING SERVICE.

4. SERVICE OF SUBPOENA AS EFFECTED IS BELIEVED TO BE VALID.

5. ONLY OTHER WAY OF SERVICING DANENZA WOULD HAVE BEEN THROUGH A REQUEST MADE BY THE DISTRICT ATTORNEY OF THE SOUTHERN
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DISTRICT OF NEW YORK TO THE PROCURATORE DELLA REPUBBLICA

IN MILANO (SEE ART. 659 CODE OF CRIMINAL PROCEDURE AND
ART. 805 #2 CODE OF CIVIL PROCEDURE). THE JUDICIAL OFFICIALS IN
MILANO DIDN'T KNOW THE TERMS OF THE CONVENTION IN FORCE
BETWEEN ITALY AND THE U.S. ON THIS SUBJECT. WE WILL ASK THE
EMBASSY IN ROME TO LOOK INTO THIS MATTER. HOWEVER, IT IS
BELIEVED THAT, ALSO IN THIS CASE, THE MATERIAL ACT OF SERVIC-
ING WOULD HAVE BEEN MADE ACCORDING TO THE SAME PROCEDURE,
THAT IS ART. 139 CIVIL PROCEDURE CODE OR ART. 169 CRIMINAL
PROCEDURE CODE DEPENDING ON THE TYPE OF ACT TO BE SERVED.FINA

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